IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1653/07

Pothi Ram & Ors. **Versus** Bharat Singh & Anr.

DATE OF ORDER :: 29/10/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Anil Jain, for petitioners

Mr. Arun Sharma, Public Prosecutor for State

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Instant petition has been filed assailing order dt.5th August, 2006 whereby their objection with regard to maintainability of application filed u/s.133 Cr.P.C. was rejected and revision petition preferred in pursuance thereof was also dismissed on 25th July, 2007.

Contention advanced by counsel for petitioners is that in regard to same alleged disputed land, the respondent herein filed a civil suit along with application for temporary injunction U/O 39 R.1 & 2 CPC and after hearing parties, order of status quo has been passed by learned trial Judge on 24th September, 2005. As such, parallel proceedings in regard to same land in question could not be initiated under the garb of Section 133 Cr.P.C. and his objection has not been properly appreciated by trial Judge and same error has been committed by Court of Revision

while passing order impugned. Learned trial Judge while examining the objection raised by petitioners has prima facie observed that at this stage no opinion can be expressed that the land in regard to which dispute arose and considered in the civil suit is the same which has come for consideration in regard to the proceedings initiated u/s.133 Cr.P.C. and no final opinion eitherway has been expressed. Court of Revision has also considered in detail and observed about public way on which some construction has been made and it has also been observed that no opinion at this stage can be expressed as to whether the land with respect to order of status quo has been passed by learned trial Judge in the pending suit, is the same in regard to which proceedings u/s.133 Cr.P.C. have been initiated. On this ground alone, the Court of Revision has also not considered appropriate to interfere in the order of trial Judge dt.5th July, 2007.

It is yet to be examined and considered after parties lead evidence as to whether the land in question is the same for which civil suit is pending between the parties in regard to which order of status quo has been passed on the application filed U/O 39 R.1 & 2 CPC dt.24th September, 2005.

This Court does not find any error in the order impugned which may call for interference at this stage.

Consequently, this court finds no substance in misc. petition, the same stands dismissed. However, petitioners will be at liberty to avail remedy, if any adverse order is passed in the pending proceedings, available to them under law.

[AJAY RASTOGI],J.